

1 A Everything was fine.

2 Q Courteous?

3 A Absolutely.

4 Q The point that you had told him that you were placing
5 him under arrest was when he began to resist?

6 A Yes, sir.

7 MR. NEUHAUSER: Nothing further at this time, Your
8 Honor.

9 THE COURT: All right, thank you, Mr. Neuhauser.

10 Jurors we're going to take a short break here for
11 our court reporter and come back at twelve o'clock and then
12 we'll go until our regular lunch hour.

13 Miss Kennedy, would you escort the jury please.

14 (The jury left the courtroom at 11:49 a.m.)

15 THE COURT: We'll be in recess until twelve
16 o'clock.

17 (A recess began at 11:50 a.m. and the case
18 continued at 12:00 p.m. in chambers.)

19 THE COURT: A new issue for you gentlemen, so sit
20 down. I don't have any familiarity with any of the parties
21 in this case, but it occurred to me last night after I went
22 home to check what is on my kitchen table as a pending
23 traffic ticket involving my daughter, and it turns out that
24 one of the defendants has written that ticket, and it is
25 pending. It was interesting to me, I don't -- her father is

1 handling it for me, so I haven't paid much attention to it,
2 but we got a notice in the mail or she got a notice in the
3 mail the other day continuing it, and I called him and said,
4 "Why is this getting continued? How are these things
5 happening?" He said, "Well, I'll look at it. It's usually
6 the officer continues it."

7 MR. NEUHAUSER: You called who?

8 THE COURT: I beg your pardon?

9 MR. NEUHAUSER: You called who?

10 THE COURT: The child's father --

11 MR. NEUHAUSER: Okay.

12 THE COURT: -- who has done some defense work, so
13 he's handling it.

14 MR. NEUHAUSER: I understand.

15 THE COURT: But, in any event, when I looked at it
16 last night, it sort of came together that the case got
17 continued by one of the officers because he's here, so I
18 wanted you to know about that.

19 MR. LAPPAS: Which officer was it?

20 THE COURT: It's Officer Steager.

21 Now, I don't expect you to answer now because it's
22 not fair to put you in that position, I think when there is
23 -- the law requires that the judge disclose any information
24 that could lead to -- lead a reasonable person to believe
25 that he or she is biased or prejudiced in the case and then

1 give the parties an opportunity to request recusal of the
2 judge and to do it without the judge knowing which one has
3 requested that. So I'll give you an opportunity to do that.

4 In the normal course these things occur not in the
5 middle of trial, and we --

6 MR. NEUHAUSER: This is a first.

7 THE COURT: Actually this is the second. We had
8 been trying a case a few weeks ago involving a lawyer who's
9 now associated with a lawyer who's suing me in federal court,
10 and I recuse on all of his cases, but I didn't know until we
11 were in the middle of picking a jury of that association. So
12 I gave the lawyers an opportunity to discreetly exercise
13 their options, and one of them did opt to ask that I be
14 removed from the case. Conflict or potential conflict was
15 not waived.

16 So just to keep things moving, what I will do here
17 is go ahead and finish up with Trooper Brown, and then I will
18 -- Miss Kennedy will give you a written disqualification form
19 which you will execute and return to the clerk's office. She
20 does not even see them, only Gary Hollinger, the deputy
21 clerk, receives those, and then we'll know where we are. But
22 I wanted you to know about this.

23 MR. NEUHAUSER: Thank you.

24 MR. LAPPAS: Well, good luck to your daughter on
25 the traffic violation.

1 THE COURT: This is a first in our family. I got
2 one the other day for an expired inspection sticker, but this
3 is our first speeding violation, so --

4 MR. LAPPAS: Okay, very well.

5 MR. NEUHAUSER: Thank you, Your Honor.

6 (The discussion in chambers concluded at 12:04 p.m.
7 and the case continued in the courtroom at 12:08 p.m.)

8 THE COURT: Mr. Lappas.

9 MR. LAPPAS: Thank you, Your Honor.

10 (Scott Allen Brown continued as the witness.)

11 CROSS EXAMINATION

12 BY MR. LAPPAS:

13 Q Mr. Brown, is there any medical or psychiatric reason
14 why you feel you're not able to testify or testify truthfully
15 today?

16 A Not that I know of.

17 Q Would you acknowledge that as of February 4, 1999 you
18 had a violent temper?

19 A Since when?

20 Q On February 4, 1999 that you had a violent temper?

21 A No.

22 Q That's your testimony?

23 A Yes, sir.

24 Q You have filed a -- you contend that as a result of
25 hitting your head on February 4, 1999 you suffered mental

1 injuries. Correct?

2 A Yes, sir.

3 Q You told Mr. Neuhauser yesterday that it was your
4 belief that you had a closed head injury. Correct?

5 A Yes, sir.

6 Q And is it your belief that this closed head injury
7 causes violent mood swings in your behavior?

8 A Not violent, sir, but mood swings, yes.

9 Q Mood swings, and it also affects your memory, does it
10 not?

11 A Yes, sir, it does.

12 Q And because of these closed head injuries that you
13 claim to have sustained, you are taking various kinds of
14 medication. Correct?

15 A Yes, sir, I am.

16 Q Do any of those medications interfere with your ability
17 to either control yourself or to testify properly?

18 A If I understand your question correctly, it's no.

19 Q Well, I'll break it down, do any of these medications
20 that you are taking now prevent you from being able to
21 control yourself, not -- specifically your anger?

22 A No.

23 Q Do any of these medications prevent you from being able
24 to testify appropriately?

25 A No.

1 Q Were you taking any kind of psychiatric medication on
2 February 4, 1999?

3 A No.

4 Q That is not true, is it?

5 A No, it's not. It is true I don't --

6 Q It is true?

7 A I was not taking any medication at the time.

8 Q All right, what I would like you to do is open the
9 binder that contains your medical records. I'm going to give
10 you the number in a moment. It is Binder No. 3, Plaintiff's
11 Binder No. 3, and I want you to turn to Exhibit Tab 13. Have
12 you found that?

13 A Yes, sir.

14 Q And do you recognize that these are documents which
15 purport to be your medical records from an admission at the
16 Hershey Medical Center?

17 A Yes, sir, they do.

18 MR. LAPPAS: Your Honor, may I approach the witness
19 to point to a particular page?

20 THE COURT: You may.

21 MR. LAPPAS: I apologize, Your Honor, these should
22 have been numbered.

23 BY MR. LAPPAS:

24 Q Mr. Brown, I'm going to show it to you in another
25 binder in which I can easily find it, and then I will find it

1 for you in this one. When you went to the hospital, you
2 spoke to nurses as you were being admitted. Do you remember
3 that?

4 A I don't remember anything about the hospital, sir.

5 MR. NEUHAUSER: Excuse me, Your Honor, may I have a
6 reference?

7 MR. LAPPAS: Oh, I'm sorry, I apologize.

8 (Mr. Lappas and Mr. Neuhauser spoke off the
9 record.)

10 BY MR. LAPPAS:

11 Q Do you remember telling the people at the Hershey
12 Medical Center on February 4, 1999 that you were taking
13 Prozac and had taken it on February 4, 1999?

14 A Sorry, I don't recall that. I don't recall anything
15 that happened at the hospital.

16 Q Is it true that you were taking Prozac on February 4,
17 1999?

18 A I don't believe so. I have taken it in the past, but I
19 don't believe it was during that time frame. My wife would
20 be better to tell you.

21 Q Well, in light of your testimony a moment ago that you
22 were not taking any sort of psychiatric medication --

23 A To my knowledge. I took it in the past for depression.

24 Q I understand. I'm going to show you a nursing note,
25 admission nursing assessment, --

1 A Yes, sir.

2 Q -- for February 4, 1999, time 23:50 hours, Scott Brown.

3 A Where do you see that?

4 Q (Indicating.)

5 A Oh, up here.

6 Q Okay, it indicates Prozac dosage 30 milligrams.

7 Frequency OD and then last taken 2-4-99. Do you see that?

8 A Yes, sir, I do see that.

9 Q Do you remember giving that information to the people
10 at the hospital?

11 A No, sir. I told you again, I don't remember anything
12 from the hospital.

13 Q And you don't remember whether or not you were in fact
14 taking Prozac or any other psychiatric medication on February
15 4, 1999?

16 A I do not recall, I'd have to refer to my wife.

17 Q From 1996 into 1999 were you being treated for any
18 anger management problems?

19 A No, depression due to marital problems and my daughter.
20 My daughter was born with a disability, I had a hard time
21 dealing with that.

22 Q I'm specifically asking you about anger management
23 problems. Were you seeing a psychologist for anger
24 management problems?

25 A I was seeing a psychologist, yes, but not for anger.

1 Q And that was a Dr. Walker?

2 A Yes, sir.

3 Q And when you saw Dr. Walker, did you frequently tell
4 him that you were having problems with handling your anger
5 because of work related matters?

6 A No, not having problems handling my anger. I had
7 depression due to my job.

8 Q So you would deny that between '96 and '99 you reported
9 to Dr. Walker that you were having anger related problems due
10 to work matters?

11 A No, not to my knowledge. I saw him again for marital
12 situations.

13 Q Specifically on December 2, 1997, for example, did you
14 tell Dr. Walker that you were angry because of some action at
15 work?

16 MR. NEUHAUSER: Your Honor, I'm going to object at
17 this point, relevance, two years before the incident.

18 THE COURT: Sustained.

19 MR. LAPPAS: I'm sorry, did you say sustained?

20 THE COURT: Sustained.

21 BY MR. LAPPAS:

22 Q Well, then closer in time to the incident, closer in
23 time to February 4, 1999, did you consult with Dr. Walker or
24 any other practitioner relative to problems with your anger
25 management?

1 A No, sir, at that point I had stopped seeing Dr. Walker
2 due to his affiliation with the state police.

3 Q You continued to see him until February 12, 1999, did
4 you not?

5 A I don't recall the dates.

6 Q With respect to the incidents of February 4, 1999 I
7 want to direct your attention to that part of your testimony
8 that deals with what happened when you went to the side of
9 the pickup truck after Mr. Yordy had reentered and after you
10 sprayed him with pepper spray. Do you remember that part of
11 your testimony?

12 A Yes, sir.

13 Q Now you stated that you reached into the truck, if I
14 understand you correctly, you reached into the truck to pull
15 him out and your sleeve was nipped at by one or more dogs?

16 A Yes, sir.

17 Q And where were these dogs?

18 A In the cab.

19 Q Does that truck have a super cab with a front and back
20 seat?

21 A No, it has, if I remember correctly, just a regular
22 cab.

23 Q And the ignition would be on the right side, the
24 ignition key lock would be on the right side of the steering
25 column?

1 A Yes, sir.

2 Q All right, so your testimony is you reached in with one
3 of your hands to pull Mr. Yordy out and was -- you were
4 nipped at by these dogs. Is that correct?

5 A No, sir, I think you have that backwards. First, we
6 had wrestled at the side. I was pulling his jacket. He got
7 in, I -- that's when I tried to grab him out and the dog
8 nipped me.

9 Q All right, let's --

10 A I then retreated, and he got in, and that's when I
11 reached in through the window.

12 Q Let's talk about the biting dogs again.

13 A Yes.

14 Q At what time were you -- what were you doing when the
15 dogs bit you?

16 A Wrestling with Mr. Yordy, trying to pull him out of the
17 cab.

18 Q So he was in the cab, you reached in to pull him out,
19 and the dogs bit you?

20 A We were both kind of half in the cab, I mean, we were
21 right at the door.

22 Q The dogs never came out of the truck?

23 A No.

24 Q And there were two of them --

25 A If I recall correctly, yes.

1 Q -- on the front seat of a regular pickup truck, and the
2 pickup truck had no back seat?

3 A Yes, sir. They were small dogs. Like I had testified,
4 they were like Huskies but they weren't, they were small.

5 Q And then you reached in with your left hand to reach
6 for the key, --

7 A Yes, sir.

8 Q -- ignition key? How did you know the key was still
9 there?

10 A I just assumed it. I saw -- actually, no, I'm sorry, I
11 take that back.

12 Q I don't want you to assume. I want you to tell me how
13 you knew the key was there.

14 A He had tried to start it, and started it, and the
15 vehicle jumped, and that's when I shut it off and tried to
16 pull it out.

17 Q So your testimony is that he had started -- the car was
18 turned off, you're standing by the side of the car, he starts
19 it up, and only then did you reach in for the key?

20 A No, simultaneously as he was trying to start it. The
21 keys were in the ignition.

22 Q My question is how did you know that?

23 A I don't recall, I just know they were.

24 Q Well, you hadn't seen them.

25 A I just know they were.

1 Q You hadn't seen them there, had you?

2 A I don't recall, I just remember knowing that they were
3 there.

4 Q But you can't tell us how you knew that?

5 A Possibly I saw them, I don't recall.

6 Q Have you ever -- in all of the testimony, you said
7 yesterday you have testified over the years in very many
8 cases, have you ever testified to your knowledge that you saw
9 the keys in the ignition?

10 A I don't recall.

11 Q Do you remember telling the nurse the information that
12 we elicited from Trooper Caruso that your true reason in
13 reaching into the Yordy vehicle was to grab or restrain Mr.
14 Yordy?

15 A That's part of what I was doing, sir.

16 Q Well, but --

17 A I was trying to restrain him and keep him from driving
18 away.

19 Q Well, but were you trying -- you had your left hand on
20 the keys and your right hand on your gun.

21 A No, I had my right hand on Mr. Yordy.

22 Q You had your right hand on Mr. Yordy?

23 A Well, first I had it on the pepper spray, and when that
24 -- when that exhausted, that's when I threw it down.

25 Q Right.

1 A And I came back in to hold on him,--

2 Q Uh-huh.

3 A -- and that's -- at that point when he got started
4 again is when I went for my weapon. But he had started it
5 for the second time when I went for my weapon.

6 Q I see, so it's your testimony that instead of -- as he
7 was grabbing at you to pull you down the road, instead of
8 grabbing your right hand which is right on him --

9 A No, it was on my gun at that point.

10 Q Well, you said you had your right hand on him and your
11 left hand on the keys.

12 A Yes.

13 Q Instead of grabbing your right hand, which is actually
14 right on him, he decided to reach around the steering wheel,
15 grab at your left hand. Is that your testimony?

16 A He didn't reach around, no, that's not my testimony,
17 sir. What my testimony is is I had started to reach for my
18 weapon when I saw that he -- it started. It was a split
19 second. I saw him start the car. I knew he was going to
20 start it again.

21 Q You knew he was --

22 A He had -- as he was --

23 Q You knew he was going to start it. How could you know
24 he was going to start it?

25 A Because I observed his right hand going back for the

1 keys.

2 Q You testified you didn't know the keys were there until
3 his hand moved towards the ignition switch.

4 A That's not what I testified to, sir, you need to go to
5 the court reporter. What I testified to was that he had
6 started the vehicle already once. You can assume that the
7 keys were in it if he had started the vehicle once.

8 Q He started the vehicle once and then --

9 A And I shut off the keys, I shut off the ignition. With
10 the key in the ignition he had started it. The key was in
11 the ignition when I shut it off.

12 Q So the reason the keys --

13 A I tried to pull --

14 Q Go on.

15 A I tried to pull the keys out, the keys were locked in
16 the ignition. I could not pull them out.

17 Q The reason you knew the keys were in the ignition was
18 because you had seen him start the car once before?

19 A Yes, that's when I reached in.

20 Q I see.

21 A You can review the videotape if you watch it.

22 Q You don't honestly believe that the videotape shows you
23 reaching for keys to the car.

24 A No, I think the videotape shows the transition. It
25 shows the time line that you're trying to --

1 Q You --

2 A -- that you're trying to put forth.

3 Q Do you believe that the videotape shows your hand in
4 the car reaching for the keys?

5 A Not in the car, it shows where my position was at the
6 time.

7 Q So --

8 A It shows me throwing the pepper spray down.

9 Q -- your testimony is that you reached your left hand in
10 the car --

11 A Uh-huh.

12 Q -- between the steering wheel and the dashboard.
13 Correct?

14 A Yes, sir.

15 Q Then down over the steering column and back to where
16 the ignition switch is. Is that correct?

17 A It's more like just over, like that. (Indicating.)

18 Q Okay, that's your left hand. Your right hand is
19 restraining Mr. Yordy?

20 A I had him by the jacket I believe.

21 Q And then when you saw him --

22 A But this is through the window, sir, this is through
23 the window.

24 Q Oh, I know, the door is closed. When you saw him turn
25 the ignition, you released your hold on him and went for the

1 gun. Is that your testimony?

2 A The second time he started the vehicle, not the first
3 time.

4 Q You're reaching over the steering column.

5 A Uh-huh.

6 Q You're reaching for the keys.

7 A Yes, sir.

8 Q In fact you actually had your hands on the keys because
9 you knew that they were locked in the ignition lock.

10 A Yes, sir.

11 Q You have your right hand on Mr. Yordy.

12 A I had the pepper spray at first, then dropped the
13 pepper spray, grabbed him, grabbed him.

14 Q Okay, and then Mr. Yordy turns the ignition key from
15 off to on. Right?

16 A For the first or second time, sir?

17 Q At the time that you had him by the jacket, at the time
18 that you reached in -- your testimony, as I understand it, is
19 that you reached in because you knew the keys were there.
20 The reason you knew the keys were there was because he had
21 already turned the car on the first time.

22 A Yes, sir, so now you're talking about the second time.

23 Q You grab him by the jacket?

24 A Yes, sir.

25 Q One hand on the ignition?

1 A Because I had shut it off.

2 Q One hand on the jacket. Right?

3 A Yes, sir.

4 Q Did you say you shut it off?

5 A The first time he started it and the vehicle jumped,
6 yes, I shut the vehicle off. That's why it jumped.

7 Q So then did he put his hand -- you had a hold of the
8 keys in order to shut them off?

9 A Yes.

10 Q Because he put his hand on top of yours to reignite it?

11 A Yes, sir.

12 Q He did?

13 A And when he started it for the second time, he had it
14 on, and I -- that's when I tried to get out, and I went for
15 my weapon.

16 Q You released his coat?

17 A I released his coat. He had -- he had the ignition. I
18 reached for my weapon and tried to pull my arm out, and
19 that's when he pinned it with his left arm. (Indicating.)

20 Q Which arm did he pin, you're demonstrating your left
21 arm.

22 A Yes, sir. With his left arm, (Indicating) pinned it
23 right on the armrest of the door and pinned it there and took
24 off. And at the same time, at the same time --

25 Q Excuse me, we're getting away from my question.

1 A Okay.

2 Q At one point you've got your left hand on the ignition
3 switch, you have got your right hand on Mr. Yordy. Right?

4 A Yes, sir.

5 Q What were the dogs doing?

6 A I don't know.

7 Q You have two dogs in the truck that nip at you because
8 you come to the door, and your testimony is you're leaning
9 with both arms and hands in the truck, your left hand way
10 past the steering column on the ignition, your right hand
11 grabbing their master, and these dogs are just doing nothing.
12 Is that your testimony?

13 A That's not my testimony.

14 Q Okay.

15 A I'm sure the dogs were doing something, sir, but I was
16 more interested in what was going on --

17 Q Were the dogs attacking you was the question.

18 A -- with Mr. Yordy. What's that?

19 Q Were the dogs attacking you at this point is the
20 question.

21 A I don't recall.

22 Q You don't recall?

23 A No, sir, I don't recall. I don't think they were. I
24 don't think they were.

25 Q Is the reason you don't --

1 A Mr. Yordy was sitting in the seat.

2 Q Is the reason you don't recall because of the memory
3 problems you have been having?

4 A No, sir, I was concentrating on Mr. Yordy and making
5 sure I got Mr. Yordy under arrest.

6 Q You were concentrating on Mr. Yordy to the extent that
7 you would not remember whether or not you were attacked by
8 two dogs?

9 A I was wearing a heavy jacket. All I remember is that
10 the dogs were small, they were just like Huskies but they
11 were smaller, and only once did I realize that they were even
12 in there when they were rip -- they had grabbed a hold of my
13 jacket and tugged at my jacket, that's why I retreated.

14 Q You started to say they ripped your jacket. Isn't that
15 what they did the first time?

16 A I don't recall.

17 Q Well, because you don't recall I'm going to ask you to
18 turn to a statement that you made to a Corporal Mrgich and a
19 Trooper -- I believe his name is Trooper Oberdorf. Do you
20 remember speaking to those gentlemen on March 23, 1999?

21 A Internal affairs, is that what you're talking about?

22 Q I didn't ask you to identify their work assignment. I
23 asked you if you remember speaking to them on that date.

24 A I remember speaking to two individuals, state policemen
25 who were internal affairs, which I assume you were speaking

1 of. I don't know their -- I don't recall their names.

2 Q All right, look at Yordy' Binder No. 3, Exhibit 11.
3 Have you found that?

4 A Yes, sir.

5 Q Exhibit 11 has a number of attachments to it. They are
6 numbered. I want you to turn to page 87 of Exhibit 11, which
7 is part of attachment No. 10.

8 A Okay, wait a minute, you want me to go to a different
9 attachment now?

10 MR. LAPPAS: May I, Your Honor?

11 THE COURT: Please.

12 THE WITNESS: You want me to go back to attachment
13 11?

14 THE COURT: He will assist you.

15 THE WITNESS: Thank you.

16 BY MR. LAPPAS:

17 Q Now if you need to turn back a few pages, please do. I
18 want you to acquaint yourself with this exhibit and determine
19 that this is a transcript of a statement which you gave to
20 Corporal Robert Mrgich and Trooper Jerry Oberdorf on March
21 23, 1999.

22 A Yes, sir, it is.

23 Q All right, and again without saying why you spoke to
24 them, would you agree that the subject of conversation was
25 the events that took place on February 4, 1999 between you

1 and Mr. Yordy?

2 A Yes, sir. Yes, sir.

3 Q All right, now turn to page -- it's page 4 of this
4 statement. There is also an inked number at the bottom that
5 says 000087.

6 A Uh-huh.

7 Q Have you found that page?

8 A Yes, sir, I did.

9 Q All right, now almost exactly halfway down the page
10 there is a line that starts with the word uh, u-h. Please
11 find that.

12 A Have it.

13 Q This statement reports that you said -- we're going to
14 start about halfway through this line: "I remember grabbing
15 him, I remember the dog coming at me and actually grabbing my
16 uh, my jacket and uh, I should have brought my jacket but
17 there is a hole in my jacket ..." Do you see that?

18 A Yes, sir.

19 Q All right, so does that refresh your recollection as to
20 whether this dog tore your jacket?

21 A Yes, sir.

22 Q It did tear your jacket?

23 A It put a hole in it.

24 Q With its teeth?

25 A Yes, it was a small hole.

1 Q So this dog that put a hole, large or small, in your
2 jacket by biting at you a moment ago is now doing nothing
3 that you can remember while you have both hands in the car,
4 one on the ignition and one on its master. Is that really
5 the testimony you'd like to leave with this jury today?

6 A Yes, sir, I was fighting. There was a lot going on.

7 Q Right, do you know an individual by the name of
8 Lieutenant Francis H. Grolemond?

9 A No.

10 Q You do not know an individual by the name of --

11 A Maybe by sight but I don't recall the name Francis.
12 If I knew what he looked like, I might know him. There is
13 over 4,000 of us.

14 MR. LAPPAS: Your Honor, this relates to the matter
15 which we discussed with the Court earlier and requires me to
16 distribute Exhibit Binder 4.

17 THE COURT: Thank you.

18 THE WITNESS: Thank you.

19 BY MR. LAPPAS:

20 Q I want you to turn to Exhibit 23 in this exhibit
21 binder, review it silently and tell me if this refreshes your
22 recollection as to whether you know Lieutenant Francis H.
23 Grolemond, Jr. from Troop "S", Milesburg of the Pennsylvania
24 State Police.

25 A Oh, yes, it did. It does, it does refresh my memory.

1 This was prior to the interstate being dissolved. At the
2 time I was a patrolman on the interstate in York.

3 Q Your testimony is --

4 A That troop is no longer around.

5 Q You did not immediately recognize the name Lieutenant
6 Grolemond because of the reorganization of Troop "S"?

7 A Yes, sir. Yes, sir, he was the last commander of Troop
8 "S".

9 Q I see, and one of his duties, I take it, was to speak
10 to you on May 8, 1997 relative to an investigation that he
11 was conducting. Correct?

12 A Yes, sir.

13 Q And on that -- during that investigation he asked you
14 to provide certain information concerning a matter that he
15 was investigating, a matter that involved you. Correct?

16 A He wasn't investigating, sir. He was the disciplinary.

17 Q You could call it an investigation, an inquiry, an
18 examination, he was doing something which required him to
19 obtain information from you involving a matter that related
20 to you. Correct?

21 A No, sir.

22 Q No.

23 A He was the basic -- he was my commanding officer. It
24 wasn't his job to do the investigation. I believe, I'm not
25 really sure who did this investigation, but I know it wasn't

1 him. He's -- he was the commanding officer. It wasn't his
2 job to do the investigating.

3 Q Still with Exhibit 23, is there an officer listed in
4 block 3, in the top right-hand corner, an officer who
5 indicated he was, quoting here, the investigating officer?

6 A Yes, Lieutenant Francis Grolemond, Jr.

7 Q All right, so let's talk about investigating officer
8 Lieutenant Francis Grolemond. Isn't it true that during the
9 course of his investigation involving an incident relating to
10 you --

11 A Uh-huh.

12 Q -- you provided him with intentionally false
13 information?

14 A Not that I recall.

15 Q You do not recall telling him, quoting from this
16 report --

17 A May I read it?

18 Q Oh, I thought you had. You may certainly read this
19 entire report, yes, sir.

20 A Thank you. (Witness reading.) I now remember this
21 incident.

22 Q Do you now remember that during the course of
23 Lieutenant Grolemond's investigation of you and your conduct
24 you provided him, intentionally provided him, you lied to
25 him, you intentionally gave him false information?

1 A Yes, sir, I did.

2 Q And do you now remember that you stated to Lieutenant
3 Grolemund that the reason you lied about an investigation
4 into your affairs was to avoid getting into trouble?

5 A I don't recall using that language, no.

6 Q Do you remember that that is the reason you lied to
7 him?

8 A I lied to him because I didn't want to get disciplined
9 for swearing. I used foul language.

10 Q You lied to him to avoid being disciplined?

11 A Yes, sir.

12 Q Is that what you just said?

13 A Yes, sir.

14 Q Do you know whether or not the Pennsylvania State
15 Police regulations allow you to lie to senior officers --

16 A No.

17 Q -- if you choose to do so?

18 A You're not allowed to, and I was disciplined for it.

19 Q I want you to look in that same binder, Binder No. 4,
20 at Exhibit 26. Now I do not want you to identify this, I
21 just want you to look at it. I don't want you to say out
22 loud what it is at this point.

23 A Okay.

24 Q I would just like you to look at it and tell me if you
25 know what it is.

1 A Please give me a second to read it.

2 Q Certainly.

3 A (Witness reading.) Yes, sir, it's relative to what you
4 just told me before, the previous thing we talked about.

5 Q The previous matter that we discussed concerning your
6 lie to Lieutenant Grolemond?

7 A Where I fibbed, yes.

8 Q Fibbed?

9 A Yes, that's what it was, omission, fib. It wasn't an
10 out and out lie, it was an omission.

11 Q It was an omission?

12 A It was an omission, I didn't tell him, and I should
13 have said that I called the person a mother fucker.

14 Q Lieutenant Grolemond states that you told him that you
15 intentionally and deliberately lied in order to stay out of
16 trouble. Is that true or not?

17 A That's not true, I omitted telling him the truth.

18 Q I see. Well, now that you have examined Exhibit No.
19 26, you recognize it, you know what it is?

20 A Yes, sir, I do, sir.

21 Q All right, do you remember that you gave a sworn
22 deposition in this case, testimony under oath, at my office
23 on January 18, 2002?

24 A I do remember us meeting, yes. I don't recall the
25 exact date but --

1 Q Do you remember that we did more than meet, that you
2 were asked questions under oath and you gave sworn testimony?

3 A Oh, yeah. Yes, sir.

4 Q And do you remember that at the time of that deposition
5 we discussed the matters contained in Exhibit 26?

6 A I believe we did touch on that, yes, sir.

7 Q Yes, now I want you to look at Exhibit Binder No. 1.
8 Please keep that one open to Exhibit 26.

9 A This one right here.

10 Q No. 4, please keep that one open.

11 A Okay.

12 Q Then open Binder No. 1 to Exhibit 1.

13 A Okay.

14 Q Do you recognize that as a transcript of your sworn
15 testimony on the day of January 18, 2002?

16 A That's what it does look like, sir, yes.

17 Q Turn to page 19.

18 A Yes, sir.

19 Q At the top of page 19 starting with the word however,
20 read that paragraph to yourself.

21 A Just the top one?

22 Q Yeah.

23 A (Witness reading.) Yes, sir.

24 Q All right, will you agree that at that point at your
25 deposition that you were testifying about the decision that I

1 directed your attention to a moment ago, Exhibit 26?

2 A Oh, no.

3 Q Oh, no?

4 A No, sir.

5 Q You will not agree to that?

6 A No, I will not agree to that. There was three
7 arbitrations, and --

8 Q Turn back --

9 A -- I was referring to the other one, the heart and lung
10 issue.

11 Q Excuse me, I want you to turn back to page 17 where we
12 start talking about what you have now said to be an
13 arbitration decision.

14 A Seventeen.

15 Q Now again I don't want you to give any details about
16 what the incident involved or --

17 A Okay, okay.

18 Q -- what was involved, but I want you to look at page 17
19 or really at any other page of this deposition transcript
20 that you need to in order to identify the matter that we were
21 discussing at page 19.

22 A I'm fully aware of the incident in which we talked.

23 Q All right, starting about two-thirds of the -- well,
24 actually on line 20 of page 17 there is an individual's name.
25 Without telling me what that name is, does that help you

1 recognize --

2 A Absolutely, sir, but there were three arbitrations that
3 arose from this one incident.

4 Q Turn to --

5 A You're twisting it around.

6 Q Am I?

7 A Yes, sir, I was referring to the heart and lung issue,
8 not this one right here.

9 Q Heart and lung is a kind of workers' compensation
10 program that covers Pennsylvania State Police troopers, is
11 that correct, and other --

12 A Yes, sir, when we get hurt --

13 Q -- and other police officers?

14 A -- on duty.

15 Q And heart and lung is something that applies without
16 regard to who's at fault for a particular incident. Correct?

17 A I don't know, I'm not a lawyer.

18 MR. LAPPAS: Your Honor, it actually might take
19 some time to go through this with the witness, would you like
20 to break for lunch now? May I ask that the witness over the
21 lunch hour examine his deposition testimony and the exhibit
22 that I have referred him to to facilitate the continued cross
23 examination.

24 THE COURT: I invite you to do that.

25 THE WITNESS: Yes, ma'am, I will.

1 THE COURT: Thank you.

2 All right, jurors, we're going to break now for
3 lunch. I'm sure you are all getting hungry, I know our court
4 reporter is. We'll be back at two o'clock.

5 Miss Kennedy, would you escort the jury please.

6 (The jury left the courtroom at 12:50 p.m.)

7 THE COURT: Mr. Lappas, if you will stay close by,
8 I have a document to give to counsel --

9 MR. LAPPAS: Absolutely, Your Honor, I will not
10 leave the courtroom.

11 THE COURT: -- forthcoming.

12 We'll be in recess.

13 (A recess began at 12:51 p.m. and the case
14 continued at 2:10 p.m.)

15 THE COURT: Mr. Lappas.

16 MR. LAPPAS: Thank you, Your Honor.

17 (Scott Allen Brown continued as the witness on
18 cross examination.)

19 BY MR. LAPPAS:

20 Q Mr. Brown, do you still have those two exhibits
21 available to you?

22 A Yes, sir, I do.

23 Q All right, I want you to turn to Exhibit 25.

24 A Which book?

25 Q I'm sorry, 26, it's in Binder 4.

1 A Okay, I'm there.

2 Q And I want you to read to yourself silently the second
3 to the last paragraph on page 4 of that exhibit starting --
4 it starts with the word on April 30.

5 A Got it. (Witness reading.) Yes, sir.

6 Q All right, does that help you identify the issues that
7 this particular report dealt with?

8 A Yeah, I do.

9 Q All right, and you're familiar with those issues.
10 Correct?

11 A Yes, sir.

12 Q And with the incident that was involved?

13 A Oh, yeah.

14 Q All right, now I'm going to ask you to turn to Exhibit
15 1, which is your deposition. It's in Binder No. 1.

16 A Okay.

17 Q And turn to page 18 of that exhibit, --

18 A Have it.

19 Q -- line 15. The question is -- starts with the word
20 so. I want you to read that question and answer to yourself
21 silently.

22 A Yes, sir, got it.

23 Q All right, now that being the case, will you now
24 acknowledge that both of these exhibits deal with the same
25 incident and the same matter?

1 A I already said that, but it's not -- you wanted me to
2 say that I was referring to that in my testimony. I was not
3 referring to that, I was referring to the other arbitration.

4 Q All right.

5 A But they are -- I understand what you just said
6 connects, but it --

7 Q Both deal generally with the subject involving 10 days.
8 Correct?

9 A Yes, sir.

10 Q All right, both deal with a decision that someone made.
11 Correct?

12 A No, this one deals with a decision, that one doesn't,
13 that was my testimony. One is my testimony; one is a
14 decision.

15 Q Do you acknowledge that in your testimony in Exhibit 1,
16 specifically at pages 18 and 19, you are attempting to
17 describe the decision that appears as Exhibit 26?

18 A No, I was not.

19 Q You were not.

20 A If you look in here, it says he felt, his findings, he
21 found, and if you look at the beginning, the name of the
22 arbitrator was a woman.

23 Q I know that.

24 A If I was referring to this specific decision, would it
25 not have said she, her? I was not referring to this

1 decision.

2 Q So your testimony is there is a separate decision that
3 deals with this same issue, --

4 A Yes.

5 Q -- that deals with the same 10 day matter --

6 A There is three of them.

7 Q Let me finish please. There is another decision that
8 deals with the same matter, with the same 10 day issue that
9 was decided by a male arbitrator?

10 A Yes, it was all the same subject, all the same
11 incident, it was just different decisions for different
12 things. One was for heart and lung, one was for this and the
13 third one was a county court case. I can't remember, that
14 was about the attorney.

15 Q Did the heart and lung issue have anything to do with a
16 10 day time period?

17 A The heart and lung had to do with me being hurt.

18 Q Did it have anything to do with a 10 day time period?

19 A No, I don't believe so.

20 Q All right.

21 A If I'm on the same page as you are, I'm trying to
22 answer you as truthfully as I can, and you got me confused.
23 You got me going to three different things here. I'm just
24 making sure I gave you the right answer.

25 Q Did the heart and lung case have anything to do with a .

1 10 day time period?

2 A No.

3 Q All right, the decision of this female arbitrator that
4 you told us about does deal with a 10 day time period.

5 Correct?

6 A Yes, it does.

7 Q Your testimony at page 18 and 19 of your deposition
8 deals with a 10 day time period. Correct?

9 A Yes, it does.

10 Q Did the county court case that you referred to have
11 anything to do with a 10 day time period?

12 A Yes, it did.

13 Q It did?

14 A Yes, it did.

15 Q Was that handled by an arbitrator in Dauphin County
16 Court?

17 A No, I think it was handled by a judge, an actual judge,
18 county court judge.

19 Q So at page 18 of your deposition transcript again at
20 Exhibit 1 when I say to you at line 20 that was the decision
21 of an arbitrator, what was your answer?

22 A All right, --

23 Q Line 20, page 18.

24 A Please give me your question again.

25 Q At line 20, page 18 of your deposition --

1 A Hold on, I'm still back on 20 where you had me, page
2 18.

3 Q Line 20.

4 A Line 20.

5 Q I say to you was that the decision of an arbitrator,
6 what was your answer?

7 A "Yes, sir."

8 Q So we know that the county court matter that you say
9 dealt with a 10 day issue was not the decision of an
10 arbitrator, that was a judge. Correct?

11 A I believe so.

12 Q Were there any other cases that arose out of this
13 particular incident that dealt with a 10 day time period that
14 were the subject matter of a decision by an arbitrator?

15 A There were two.

16 Q Were there any other cases --

17 A Any other cases.

18 Q -- involving this particular incident --

19 A Okay.

20 Q -- that dealt with a 10 day time period that resulted
21 in the decision by an arbitrator?

22 A Sir, I apologize, but I don't know what the heck you're
23 getting at. I'm trying -- I want to give you a right answer
24 here, but you got me confused.

25 Q What I'm getting at is this, Mr. Brown, Exhibit 26,

1 which is a certain arbitration award, deals with a 10 day
2 situation.

3 A Yes, it does.

4 Q You were one of the parties to that matter. Correct?

5 A Yes, I was.

6 Q You prevailed in that case because the state police had
7 missed a time deadline.

8 MR. NEUHAUSER: Your Honor, I'm going to object at
9 this point, well beyond the scope of the Court's ruling on
10 this issue.

11 MR. LAPPAS: I'm simply trying to identify this in
12 such a way that the witness is compelled to admit that we're
13 dealing with the same thing.

14 THE COURT: I don't think you're getting there, Mr.
15 Lappas. I think he's explained his answer as best he can.
16 There is nowhere else to go with this. Let's move on.

17 MR. LAPPAS: All right.

18 BY MR. LAPPAS:

19 Q Now with respect to the events of February 4, 1999, do
20 you contend that Vicki Smith attacked you in any way?

21 A Yes.

22 Q At what point during these events do you contend that
23 she attacked you?

24 A Um, when we were on the ground, she kicked me. To be
25 honest with you, the only reason I know that is I watched the

1 video.

2 Q So your testimony is you did not know it when she
3 kicked you, but then you saw it in the video?

4 A She was hovering over us, and I went like this,
5 (Indicating) you know, trying to, as we were fighting, just
6 swinging so she would stay back, but as far as kicking me,
7 no, I had to watch the video for that.

8 Q Did you feel her kick you on the night of February 4?

9 A Sir, I was on the ground with a probably 200 pound man
10 on top of me. I was only interested in getting out from
11 under.

12 Q Is that a no?

13 A I would assume so, yes.

14 Q Turn to page 60 of Exhibit 2 in Binder 1. This is
15 another deposition.

16 A Binder 1?

17 Q Yes. Have you found that page?

18 A Yes, sir.

19 Q Now this was sworn testimony that you gave at a law
20 firm in Harrisburg on July 9, 2002. Is that correct?

21 A I cannot confirm the date, I don't have my date book
22 with me, but, yes, I did give testimony there.

23 Q Now on page 60 you describe the alleged kicking by
24 Vicki Smith, correct, starting at line 2 --

25 A Hold on, I got to get there. At line --

1 Q Two.

2 A Yes, sir.

3 Q Would you read how you describe that kicking incident.

4 MR. NEUHAUSER: Your Honor, I'm going to object.

5 This isn't proper cross examination. He's acknowledged
6 previous questioning. The answer that Mr. Lappas is seeking
7 now he's trying to introduce testimony that is not
8 inconsistent.

9 THE COURT: Sustained.

10 BY MR. LAPPAS:

11 Q You testified I believe earlier today that you do not
12 presently have a problem with violent mood swings. Is that
13 accurate?

14 A That's true, due to medication. Medication helps me.

15 Q But you will acknowledge, would you not, that you have
16 a great deal of anger?

17 A Yes.

18 Q That anger is at least in part directed to my client?

19 A Yes, for what I have been through, but I'm dealing with
20 it. I'm seeing a psychiatrist. I'm getting help.
21 Eventually I'll lay this down.

22 Q On February 4 when Vicki Smith first approached you,
23 your testimony is she was friendly and cordial towards you.
24 Correct?

25 A Yes, she was. She was overly friendly, touching me to

1 the point that it made me nervous, but I just figured she was
2 just a happy drunk.

3 Q She was pleading with you, was she not?

4 A At one point she was, yes, sir. I know she did not
5 want me to arrest him. She wanted me to release him to her.

6 Q And Randy, I'm sorry, Mr. Yordy, was also cordial and
7 friendly with you at the beginning according to your
8 testimony?

9 A Yes, sir. Yes, sir.

10 Q And this situation went from being cordial and friendly
11 to a situation where they both assaulted and attacked you.
12 Is that your testimony?

13 A Yes, sir, it is.

14 Q Now you acknowledged yesterday that you broke Randy
15 Yordy's nose with your first punch. Correct?

16 A Yes, sir, I did.

17 Q And will you acknowledge that you fell to the ground
18 hard enough to the side of the road to cause him to break his
19 arm?

20 A I don't know when that happened, sir, but we fell but
21 I'd say no because he hit me. I mean, I cushioned his blow,
22 he was on top of me. Maybe if he was on the bottom, I'd say
23 yes, but, no, I cannot say when it happened.

24 Q Please turn to your Deposition Exhibit No. 1. It's in
25 Binder 1, Exhibit 1.

1 A Yes, sir.

2 Q Page 71.

3 A Yes, sir.

4 Q The question that begins on line 23: "Did you do
5 anything during the course of this incident which could have,
6 in your judgment, resulted in a broken arm to him?" Do you
7 see that question?

8 A Uh-huh. Yes, sir.

9 Q And what was your answer at the top of page 72?

10 A "Yeah, we went down hard, and I landed on top of him."

11 Q You landed on top of him, keep going.

12 A "You know, like I said, we lost our footing, and 200
13 pounds came -- and 200 pounds coming down on you. And it was
14 all rock. It wasn't any -- it wasn't any dirt. It was all
15 gravel and rock in the area."

16 Q All right, now does that change your testimony as to
17 whether anything happened between you and him that could have
18 caused him to break his arm?

19 A It's possible, but I don't remember testifying --
20 saying that. I don't remember saying that I landed on top of
21 him because he landed on top of me.

22 Q Do you dispute the accuracy of this transcript?

23 A Yes, I may have misspoke. That's all I'm saying. I
24 may have misspoken.

25 Q You may have said the wrong thing?

1 A Yes.

2 Q But you're not saying this transcript is itself
3 incorrect?

4 A Oh, no, I'm human, I make mistakes.

5 Q When you said: "You know, like I said, we lost our
6 footing, and 200 pounds coming down on you," you were
7 referring to your weight, 200 pounds coming down on Randy
8 Yordy.

9 A No, I was referring to him. He was a pretty strong,
10 pretty stocky man.

11 Q So when you said, "... I landed on top of him. You
12 know, ... 200 pounds coming down on you."

13 A I weighed 180 pounds at the time. I now weigh 200. At
14 the time I weighed 180.

15 Q During your interview with Corporal Mrgich did you tell
16 him when you were on the ground with Randy Yordy you
17 threatened to blow his head off?

18 A I don't recall. Do you have that? May I read that?

19 Q It is Attachment 10. To read it, Mr. Brown, you're
20 going to need Plaintiff's Exhibit Binder 3.

21 A Got it.

22 Q You're going to need to turn to Exhibit 11.

23 A Got it.

24 Q And you're going to need to find Attachment 10. Each
25 of the attachments is numbered at the bottom right-hand

1 corner.

2 A I have Attachment 10 but it's this. (Indicating.)

3 Q Perhaps we're not looking at the same document.

4 A Binder 3.

5 Q What you're looking at is Attachment 2.

6 A Oh, I'm sorry, I just saw the numbers on the bottom.
7 Okay.

8 Q Have you got the right exhibit?

9 A Thank you. Calm down, you're under arrest, stop
10 fighting me. It doesn't appear so.

11 Q All right, one final point. I want you to turn to
12 Binder No. 3, Exhibit No. 3, I'm sorry, Exhibit No. 13,
13 Binder No. 3.

14 A Oh, that's more like it. Penn State Geisinger?

15 Q Yes.

16 A Okay. Do you want me to keep my hand on the other one?

17 Q Not necessary. Approximately the third or maybe fourth
18 page there is a document called Emergency Department Note.
19 Date of February 4, 1999.

20 A Okay.

21 Q Have you found that?

22 A Yes, I found that.

23 Q The second paragraph of that note indicates, quoting,
24 "The patient's medications are Prozac." Do you see that?

25 A Yes, sir. I told you I don't recall anything about the

1 hospital. I had previously been on Prozac because, well,
2 quite frankly, my daughter is disabled. She was born that
3 way. I had a hard time dealing with it.

4 Q Well, this note relates to information that the
5 hospital personnel received on February 4, 1999. Did you
6 tell them that or did you not?

7 A I don't recall anything that happened in the hospital.
8 They could have pulled it from my records, I don't know.

9 Q Was your wife with you at the hospital?

10 A Nobody was with me.

11 Q Well, you told us earlier today that your wife would
12 have better information.

13 A Yes, she would have the time frames of when I was, when
14 I was taking them.

15 Q She was not at the hospital to advise the doctor, the
16 personnel, of your Prozac taking?

17 A No, no.

18 MR. LAPPAS: Thank you. I have no further
19 questions of this witness.

20 THE COURT: Thank you. Mr. Neuhauser.

21 MR. NEUHAUSER: May I have a moment, Your Honor?

22 THE COURT: Please.

23 (Pause.)

24 MR. NEUHAUSER: I have no redirect, Your Honor.

25 THE COURT: All right, thank you.

1 Trooper, thank you. You may step down.

2 THE WITNESS: Thank you.

3 (The testimony of Scott Allen Brown concluded.)

4
5 I hereby certify that the proceedings and evidence
6 of the court are contained fully and accurately in the notes
7 taken by me on the testimony of Scott Allen Brown from the
8 jury trial of the within cause and that this is a correct
9 transcript of the same.

10 Monica L. Zamiska

11 Monica L. Zamiska, RPR

12 Official Court Reporter
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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RANDY YORDY,
Plaintiff

v.


SCOTT BROWN, PAUL EVANKO,
BERON F. STEAGER, AND BARRY L.
BRINSER, et al.,
Defendants

:
:
: No. 1:01-CV-0206
:
: (Judge Kane)

CERTIFICATE OF SERVICE

I, **GREGORY R. NEUHAUSER**, Senior Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on **March 7, 2003**, I caused to be served a true and correct copy of the foregoing document **Exhibits in Support of Defendants' brief in Opposition to Plaintiff's Motion For A New Trial**, by depositing it in the United States mail, first-class postage prepaid to the following:

Spero T. Lappas, Esquire
Serratelli, Schiffman, Brown & Calhoon, P.C.
2080 Linglestown Road, Suite 201
Harrisburg, PA 17110



GREGORY R. NEUHAUSER
Senior Deputy Attorney General